THE HON'BLE Ms. JUSTICE G. ROHINI

W.P.No.19293 of 2005

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ORDER:

This Writ Petition is filed seeking a declaration that the Order dated 23.3.2005 issued by the 1st respondent- Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad, permitting the 4th respondent to continue as the diet contractor of the District Hospital, Sangareddy, for supply of diet to the inpatients and duty doctors for the period from 01.04.2005 to 31.03.2006, as arbitrary and illegal, and for a consequential direction to finalize the tenders submitted by the petitioner and others in pursuance of the tender notifications dated 16.3.2005, in accordance with law.

The facts in brief may be stated as under:

The 2nd respondent-Medical Superintendent, District Hospital, Sangareddy and Deputy Civil Surgeon, Community Health Centre, Sadasivpet, Medak District, issued respective tender notifications dated 16.3.2005 calling for fresh tenders, for supply of the diet to the inpatients of District Hospital, Sangareddy and Community Health Centre, Sadasivpet, Medak District. The Writ Petitioner states that he submitted sealed tender along with the required E.M.D of Rs.25,000/- on 24.3.2005. However, it appears that the 4th respondent herein, filed W.P.No.5917 of 2005, and by virtue of the interim orders granted in the said Writ Petition, finalization of the tenders, in pursuance of the tender notifications, was stayed. Subsequently, by order dated 28.7.2005, the said Writ Petition was dismissed as infructuous. Consequently, the interim stay of finalization of tenders also stood vacated. In spite of the same, the respondents 2 and 3 failed to finalize the tenders. On the other hand, the 1st respondent issued proceedings dated 23.3.2005 extending the diet contract in favour of the 4th respondent, from 1.04.2005 to 31.3.2006. Aggrieved by the said action, this Writ Petition is filed.

Learned counsel for the petitioner mainly contends that the said action of the respondents in extending the diet contract in favour of the 4th respondent is in

violation of the Circular instructions dated 11.03.2005 issued by the 3rd respondent-District Coordinator of Hospital Services, Medak District at Sangareddy. It is also contended that having issued the tender notifications and having received the tenders from many eligible bidders, the 1st respondent is not justified in not finalizing them and proceeding further to extend the diet contract in favour of the 4th respondent, who is the existing contractor.

On behalf of the 1st respondent- Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad, a counter-affidavit has been filed stating that as per G.O.Ms.No.32, Health, Medical and Family Welfare (MI) Department, dated 2.02.2005, it is decided to give a minimum period of three years to the Diet Canteen Contracts in respect of supply of diet to inpatients and duty doctors of all Government Hospitals, and all the concerned officials are directed to continue the existing diet contractors if the supply of diet is satisfactory, and fresh tenders required to be notified only if the supply of the diet is found to be unsatisfactory. Accordingly, a general Circular was issued on 22.2.2005 to all the Medical Superintendents to follow the Government Order issued under G.O.Ms.No.35 dated 2.2.2005. As a matter of fact, the said circular dated 22.02.2005 was also communicated to the 2nd respondent- Medical Superintendent, District Hospital, Medak District at Sangareddy. However, the 2nd respondent in a mistaken impression issued a circular dated 11.03.2005 directing all his subordinates to call for fresh tenders for supply of the diet in the hospitals. It is further stated that the 2nd respondent- Medical Superintendent, District Hospital, Sangareddy made a proposal vide letter dated 09.03.2005 for continuation of the diet contractors for the year 2005-2006. On the basis of the said proposal made by the 2nd respondent, the 1st respondent accorded permission to continue the existing diet contractor of the District Hospital, Sangareddy, for further period from 1.04.2005 to 31.03.2006 vide proceedings dated 23.03.2005. It is pleaded that the then Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad, acted according to the proposal made by 2nd respondent, and subsequently when the circular dated 11.3.2005 issued by the 3rd respondent was brought to the notice of the 1st respondent, the 1st respondent directed cancellation of the circular dated 11.3.2005 immediately and also directed the 2nd respondent to follow the instructions issued in the circular dated 22.02.2005. Since the circular dated 11.03.2005 stood cancelled, the respondents have not taken any further steps in pursuance of the tender

notifications dated 16.3.2005 and all the bidders, except the petitioner, have taken back their E.M.D. It is stated that though the petitioner was also informed to take back the E.M.D furnished by him, he refused to do so. Thus, it is pleaded that the action of the 1st respondent in extending the diet contract in favour of the 4th respondent is based on the Government Policy enumerated in G.O.Ms.No.32, dated 2.2.2005, and does not warrant any interference.

The learned Standing Counsel appearing for the respondents 1 to 3 submits that as per G.O.Ms.No.32 dated 02.02.2005, it is open to the concerned officials to continue the existing diet contractors in case supply of the diet is found to be satisfactory. The learned Standing Counsel points out that as per the proposal dated 9.03.2005 and the certificate issued by the Medical Superintendent, District Hospital, Sangareddy, dated 4.03.2005, it was found that the 4th respondent was running Diet Canteen in the premises of the District Hospital, Sangareddy and was supplying the diet to the inpatients of the hospital satisfactorily. Therefore, according to the learned Standing Counsel the impugned order dated 23.03.2005 cannot be found fault with.

It is to be noted that under G.O.Ms.No.32 dated 2.02.2005 certain instructions have been issued regarding the diet supplied to the inpatients and duty doctors, particularly with regard to entrustment of Diet Contracts to Private Contractors in Government Teaching Speciality Hospitals under the Control of Director of Medical Education in the State. It is true that in the said order the Superintendents of the concerned hospitals were permitted to grant diet contracts for a minimum period of three years in respect of Government Hospitals/Government Teaching Speciality Hospitals with a proviso that it can be terminated if the performance is found to be unsatisfactory at any time during the contract period, with immediate effect. However, it is not in dispute that the procedure for allotment of the diet contracts to the contractors shall be only by way of tender system. In the case on hand, as can be seen from the letter of the District Coordinator of the Hospital services, Sangareddy, Medak District, dated 11.03.2005, it is clear that the 4th respondent herein, is being continued as the diet contractor from the year 2000 onwards. The learned counsel appearing for the 4th respondent does not dispute the said fact. The said letter also shows that several objections were raised by the Members of the Legislative Assembly, Members of Parliament and other public representatives in the Zilla Parishad meetings and District Development Review Committee Meetings

about continuing the same diet contracts for several years and about their performance. Keeping in view the fact that in Medak District almost all the diet contractors are being continued for the past several years, and particularly the 4th respondent has been continuing from the year 2000, I am unable to hold that the 1st respondent can extend the period of the diet contract for one more year under the guise of Clause (3) of G.O.Ms.No.32 dated 2.02.2005, without allotting the diet contracts to the successful bidders by way of tender system. Though it is open to the concerned Superintendents of the Hospitals to give the diet contract for a minimum period of three years, it cannot be said that the contracts of the existing contractors can be extended without inviting fresh tenders. Particularly in the case on hand, having invited tenders under the tender notifications dated 16.3.2005, the respondents are not justified in not finalizing the tenders merely on the ground that the circular dated 11.3.2005 issued by the 2nd respondent was cancelled. The said circular issued by the 2nd respondent cannot be said to be in conformity with the guidelines issued under G.O.Ms.No.32 dated 2.02.2005. In the circumstances, having issued the tender notifications, the respondents ought to have finalized the tenders, particularly keeping in view that fact that W.P.No.5917 of 2005 filed by some of the diet contractors was dismissed by this Court. It is also relevant to note that this Court while directing *Rule Nisi* by order dated 5.09.2005 issued interim directions to the respondents 1 to 3 to proceed with the tenders pursuant to the tender notifications, in accordance with law. However, the learned Standing Counsel across the bar states that since all the E.M.Ds., furnished by the participating bidders had already been returned, and particularly keeping in view the fact that tender notifications were issued long back in the month of April, 2005, it may not be possible for the respondents to finalize the tenders.

The Writ Petition is accordingly disposed of with a direction to the respondents 1 to 3 to issue fresh tender notification in respect of diet contract for supply of diet to inpatients and duty doctors in District Hospital, Sangareddy, and to finalize the same in accordance with law, as expeditiously as possible, preferably within a period of six weeks from the date of receipt of this order. It is also made clear that the E.M.D furnished by the petitioner shall be refunded, and it is open to the petitioner to participate in the tender process in pursuance of fresh tender notification that may be issued.

With the above direction the Writ Petition is disposed of. No costs.

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(G. ROHINI, J.)

23rd November, 2005.

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Ms JUSTICE G.ROHINI

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WRIT PETITION No.19293 of 2005

Between:

Mohd.Abdul Sattar S/o.M.A.Hassan,
R/o.H.No.3-2-109, Rahmath Nagar, Sangareddy,
Medak Dist.

..PETITIONER

AND

1 The Commissioner A.P., Vaidya Vidhana Parishad, Sultan Bazar, Hyderabad.
2 The Medical Superintendent District Hospital, Medak District, as Sangareddy.
3 The District Co-ordinator of Hospital services, District Head Quarters Hospitals, Sangareddy, Medak Dist.
4 The Diet Contractor, District Hospital Sangareddy, rep.by M.A.Jaleel, S/o.M.A.Razzak,

R/o.H.No.6-1-9, Upper Bazar, Main Road,
Sangareddy, Medak District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ order or direction more particularly one in the nature of writ of Mandamus declaring the impugned order in proceedings R.C. No.393/H.E.C. - B/2005, dated 23-3-2005, issued by the 1st respondent in favour of the 4th respondent permitting him to continue as Diet contractor of the District Hospital Sangareddy, for supply the Diet to the in patients and duty doctors of the Hospitals Sangareddy, for further period from 1.4.2005 to 31-3-2006(one year only) as illegal, improper, arbitrary, in violation of Article 14 of the Constitution of India, against public policy, principle of natural justice and contrary to the proceedings in circular No. 702/SI/DCHS/SRD/2005, dated 11-3-2005, issued by the respondent No.3, consequently direct the respondent 1 to 3 to finalize the tenders submitted by the petitioner and others on 24-3-2005, as per the circular No.702/SI/ DCHS/SRD/2005, dated 11-3-2005, and tender notification dated 15-3-2005 and 16-3-2005, in accordance with law in the interest of justice and to grant such other and further relief as this Hon'ble court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr.ALI FAROOQUE

Counsel for the Respondent No.: Mr.S.A.WAHEED SHABAZ